United Nations A/CN.4/526/Add.1

General Assembly

Distr.: General
8 April 2002
English
Original: French

International Law Commission
Fifty-fourth session
Geneva, 29 April-7 June and 22 July-16 August 2002

Seventh report on reservations to treaties

By Mr. Alain Pellet, Special Rapporteur

Addendum

Annex

Consolidated text of all draft guidelines adopted by the Commission or proposed by the Special Rapporteur

NB: The draft guidelines proposed by the Special Rapporteur but not adopted by the Commission are in italics.

Guide to Practice

1. Definitions

1.1 Definition of reservations[1]

"Reservation" means a unilateral statement, however phrased or named, made by a State or an international organization when signing, ratifying, formally confirming, accepting, approving or acceding to a treaty or by a State when making a notification of succession to a treaty, whereby the State or organization purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State or to that international organization.

---

* Complexity of issues dealt with in the report resulted in the delayed submission of the present document.

[1] For the commentary to this draft guideline, see *Yearbook ... 1998*, vol. II (Part II), pp. 103-105.

02-31943 (E) 290402 290402

BEST COPY AVAILABLE

1.1.1 Object of reservations[2]

A reservation purports to exclude or modify the legal effect of certain provisions of a treaty or of the treaty as a whole with respect to certain specific aspects in their application to the State or to the international organization which formulates the reservation.

1.1.2 Instances in which reservations may be formulated[3]

Instances in which a reservation may be formulated under guideline 1.1 include all the means of expressing consent to be bound by a treaty mentioned in article 11 of the Vienna Conventions of 1969 and 1986 on the law of treaties.

1.1.3 [1.1.8] Reservations having territorial scope[4]

A unilateral statement by which a State purports to exclude the application of a treaty or some of its provisions to a territory to which that treaty would be applicable in the absence of such a statement constitutes a reservation.

1.1.4 Reservations formulated when notifying territorial application[5]

A unilateral statement by which a State purports to exclude or to modify the legal effect of certain provisions of a treaty in relation to a territory in respect of which it makes a notification of the territorial application of the treaty constitutes a reservation.

1.1.5 Statements purporting to limit the obligations of their author[6]

A unilateral statement formulated by a State or an international organization at the time when that State or that organization expresses its consent to be bound by a treaty by which its author purports to limit the obligations imposed on it by the treaty constitutes a reservation.

1.1.6 Statements purporting to discharge an obligation by equivalent means[7]

A unilateral statement formulated by a State or an international organization when that State or that organization expresses its consent to be bound by a treaty by which that State or that organization purports to discharge an obligation pursuant to the treaty in a manner different from but equivalent to that imposed by the treaty constitutes a reservation.

1.1.7 Reservations formulated jointly[8]

The joint formulation of a reservation by several States or international organizations does not affect the unilateral nature of that reservation.

---

[2] For the commentary to this draft guideline, see *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 10* (A/54/10), pp. 169-174.

[3] For the commentary to this draft guideline, see *Yearbook ... 1998*, vol. II (Part II), pp. 107-108.

[4] For the commentary to this draft guideline, see ibid., pp. 108-110.

[5] For the commentary to this draft guideline, see ibid., p. 110.

[6] For the commentary to this draft guideline, see *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 10* (A/54/10) pp. 174-178.

[7] For the commentary to this draft guideline, see ibid., p. 179.

[8] For the commentary to this draft guideline, see *Yearbook ... 1998*, vol. II (Part II), pp. 110-112.

1.1.8 Reservations made under exclusionary clauses[9]

A unilateral statement made by a State or an international organization when that State or organization expresses its consent to be bound by a treaty, in accordance with a clause expressly authorizing the parties or some of them to exclude or to modify the legal effect of certain provisions of the treaty in their application to those parties, constitutes a reservation.

1.2 Definition of interpretative declarations[10]

"Interpretative declaration" means a unilateral statement, however, phrased or named, made by a State or by an international organization whereby that State or that organization purports to specify or clarify the meaning or scope attributed by the declarant to a treaty or to certain of its provisions.

1.2.1 Conditional interpretative declarations[11]

A unilateral statement formulated by a State or an international organization when signing, ratifying, formally confirming, accepting, approving or acceding to a treaty, or by a State when making a notification of succession to a treaty, whereby the State or international organization subjects its consent to be bound by the treaty to a specific interpretation of the treaty or of certain provisions thereof, shall constitute a conditional interpretative declaration.

1.2.2 Interpretative declarations formulated jointly[12]

The joint formulation of an interpretative declaration by several States or international organizations does not affect the unilateral nature of that interpretative declaration.

1.3 Distinction between reservations and interpretative declarations[13]

The character of a unilateral statement as a reservation or an interpretative declaration is determined by the legal effect it purports to produce.

1.3.1 Method of implementation of the distinction between reservations and interpretative declarations[14]

To determine whether a unilateral statement formulated by a State or an international organization in respect of a treaty is a reservation or an interpretative declaration, it is appropriate to interpret the statement in good faith in accordance with the ordinary meaning to be given to its terms, in light of the treaty to which it refers. Due regard shall be given to the intention of the State or the international organization concerned at the time the statement was formulated.

---

[9] For the commentary to this draft guideline, see *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 10* (A/55/10), pp. 205-221.

[10] For the commentary to this draft guideline, see ibid., *Fifty-fourth Session, Supplement No. 10* (A/54/10), pp. 180-184.

[11] For the commentary to this draft guideline, see ibid., pp. 194-202.

[12] For the commentary to this draft guideline, see ibid., pp. 202-204.

[13] For the commentary to this draft guideline, see ibid., pp. 205-206.

[14] For the commentary to this draft guideline, see ibid., pp. 206-211.

1.3.2 Phrasing and name[15]

The phrasing or name given to a unilateral statement provides an indication of the purported legal effect. This is the case in particular when a State or an international organization formulates several unilateral statements in respect of a single treaty and designates some of them as reservations and others as interpretative declarations.

1.3.3 Formulation of a unilateral statement when a reservation is prohibited[16]

When a treaty prohibits reservations to all or certain of its provisions, a unilateral statement formulated in respect thereof by a State or an international organization shall be presumed not to constitute a reservation except when it purports to exclude or modify the legal effect of certain provisions of the treaty or of the treaty as a whole with respect to certain specific aspects in their application to its author.

1.4 Unilateral statements other than reservations and interpretative declarations[17]

Unilateral statements formulated in relation to a treaty which are not reservations nor interpretative declarations are outside the scope of the present Guide to Practice.

1.4.1 Statements purporting to undertake unilateral commitments[18]

A unilateral statement formulated by a State or an international organization in relation to a treaty, whereby its author purports to undertake obligations going beyond those imposed on it by the treaty constitutes a unilateral commitment which is outside the scope of the present Guide to Practice.

1.4.2 Unilateral statements purporting to add further elements to a treaty[19]

A unilateral statement whereby a State or an international organization purports to add further elements to a treaty constitutes a proposal to modify the content of the treaty which is outside the scope of the present Guide to Practice.

1.4.3 Statements of non-recognition[20]

A unilateral statement by which a State indicates that its participation in a treaty does not imply recognition of an entity which it does not recognize constitutes a statement of non-recognition which is outside the scope of the present Guide to Practice even if it purports to exclude the application of the treaty between the declaring State and the non-recognized entity.

---

[15] For the commentary to this draft guideline, see ibid., pp. 212-216.
[16] For the commentary to this draft guideline, see ibid., pp. 216-218.
[17] For the commentary to this draft guideline, see ibid., pp. 218-220.
[18] For the commentary to this draft guideline, see ibid., pp. 220-222.
[19] For the commentary to this draft guideline, see ibid., pp. 222-223.
[20] For the commentary to this draft guideline, see ibid., pp. 224-228.

1.4.4 General statements of policy[21]

A unilateral statement formulated by a State or by an international organization whereby that State or that organization expresses its views on a treaty or on the subject matter covered by the treaty, without purporting to produce a legal effect on the treaty, constitutes a general statement of policy which is outside the scope of the present Guide to Practice.

1.4.5 Statements concerning modalities of implementation of a treaty at the internal level[22]

A unilateral statement formulated by a State or an international organization whereby that State or that organization indicates the manner in which it intends to implement a treaty at the internal level, without purporting as such to affect its rights and obligations towards the other contracting parties, constitutes an informative statement which is outside the scope of the present Guide to Practice.

1.4.6 Unilateral statements made under an optional clause[23]

A unilateral statement made by a State or by an international organization, in accordance with a clause in a treaty expressly authorizing the parties to accept an obligation that is not otherwise imposed by the treaty, is outside the scope of the present Guide to Practice.

A restriction or condition contained in such statement does not constitute a reservation within the meaning of the present Guide to Practice.

1.4.7 Unilateral statements providing for a choice between the provisions of a treaty[24]

A unilateral statement made by a State or an international organization, in accordance with a clause in a treaty that expressly requires the parties to choose between two or more provisions of the treaty, is outside the scope of the present Guide to Practice.

1.5 Unilateral statements in respect of bilateral treaties[25]

1.5.1 "Reservations" to bilateral treaties[26]

A unilateral statement, however phrased or named, formulated by a State or an international organization after initialling or signature but prior to entry into force of a bilateral treaty, by which that State or that organization purports to obtain from the other party a modification of the provisions of the treaty to which it is subjecting the expression of its final consent to be bound, does not constitute a reservation within the meaning of the present Guide to Practice.

---

[21] For the commentary to this draft guideline, see ibid., pp. 228-232.

[22] For the commentary to this draft guideline, see ibid., pp. 232-236.

[23] For the commentary to this guideline, see ibid., *Fifty-fifth Session, Supplement No. 10* (A/55/10), pp. 222-229.

[24] For the commentary to this draft guideline, see ibid., pp. 229-235.

[25] For the commentary to this draft guideline, see ibid., *Fifty-fourth Session, Supplement No. 10* (A/54/10), pp. 236-237.

[26] For the commentary to this draft guideline, see ibid., pp. 237-246.

1.5.2 Interpretative declarations in respect of bilateral treaties[27]

Draft guidelines 1.2 and 1.2.1 are applicable to interpretative declarations in respect of multilateral as well as bilateral treaties.

1.5.3 Legal effect of acceptance of an interpretative declaration made in respect of a bilateral treaty by the other party[28]

The interpretation resulting from an interpretative declaration made in respect of a bilateral treaty by a State or an international organization party to the treaty and accepted by the other party constitutes the authentic interpretation of that treaty.

1.6 Scope of definitions[29]

The definitions of unilateral statements included in the present chapter of the Guide to Practice are without prejudice to the permissibility and effects of such statements under the rules applicable to them.

1.7 Alternatives to reservations and interpretative declarations

1.7.1 Alternatives to reservations[30]

In order to achieve results comparable to those effected by reservations, States or international organizations may also have recourse to alternative procedures, such as:

- The insertion in the treaty of restrictive clauses purporting to limit its scope or application;
- The conclusion of an agreement, under a specific provision of a treaty, by which two or more States or international organizations purport to exclude or modify the legal effects of certain provisions of the treaty as between themselves.

1.7.2 Alternatives to interpretative declarations[31]

In order to specify or clarify the meaning or scope of a treaty or certain of its provisions, States or international organizations may also have recourse to procedures other than interpretative declarations, such as:

- The insertion in the treaty of provisions purporting to interpret the same treaty;
- The conclusion of a supplementary agreement to the same end.

---

[27] For the commentary to this draft guideline, see ibid., pp. 247-250.
[28] For the commentary to this draft guideline, see ibid., pp. 250-251.
[29] For the commentary to this draft guideline, see ibid., pp. 251-253.
[30] For the commentary to this draft guideline, see ibid., *Fifty-fifth Session, Supplement No. 10* (A/55/10), pp. 237-256.
[31] For the commentary to this draft guideline, see ibid., pp. 256-258.

Procedure

2.1 *Form and notification of reservations*

2.1.1 Written form[32]

A reservation must be formulated in writing.

2.1.2 Form of formal confirmation[33]

When formal confirmation of a reservation is necessary, it must be made in writing.

[2.1.3 Competence to formulate a reservation at the international level[34]

Subject to the customary practices in international organizations which are depositaries of treaties, any person competent to represent a State or an international organization for the purpose of adopting or authenticating the text of a treaty or expressing the consent of a State or an international organization to be bound by a treaty is competent to formulate a reservation on behalf of such State or international organization.]

[2.1.3 Competence to formulate a reservation at the international level

1. Subject to the customary practices in international organizations which are depositaries of treaties, a person is competent to formulate a reservation on behalf of a State or an international organization if:

(a) That person produces appropriate full powers for the purposes of adopting or authenticating the text of the treaty with regard to which the reservation is formulated or expressing the consent of the State or organization to be bound by the treaty; or

(b) It appears from practice or other circumstances that it was the intention of the States and international organizations concerned to consider that person as competent for such purposes without having to produce full powers.

2. By virtue of their functions and without having to produce full powers, the following are competent to formulate a reservation at the international level on behalf of a State:

(a) Heads of State, heads of Government and Ministers for Foreign Affairs;

(b) Representatives accredited by States to an international conference for the purpose of formulating a reservation to a treaty adopted at that conference;

(c) Representatives accredited by States to an international organization or one of its organs, for the purpose of formulating a reservation to a treaty adopted by that organization or body;

[(d) Heads of permanent missions to an international organization, for the purpose of formulating a reservation to a treaty between the accrediting States and that organization.]

---

[32] For the presentation of this draft guideline, see "Sixth report on reservations to treaties" (A/CN.4/518/Add.1), paras. 40-52.

[33] For the presentation of this draft guideline, see ibid.

[34] For the presentation of the two alternative versions of this draft guideline, see ibid., paras. 53-71.

[2.1.3 bis Competence to formulate a reservation at the internal level[35]

The determination of the competent body and the procedure to be followed for formulating a reservation at the internal level is a matter for the internal law of each State or international organization].

2.1.4 Absence of consequences at the international level of the violation of internal rules regarding the formulation of reservations[36]

A State or an international organization may not invoke the fact that a reservation has been formulated in violation of a provision of the internal law of that State or the rules of that organization regarding competence and the procedure for formulating reservations as invalidating the reservation.

2.1.5 Communication of reservations[37]

A reservation must be communicated in writing to the contracting States and contracting organizations and other States and international organizations entitled to become parties to the treaty.

A reservation to a treaty in force which is the constituent instrument of an international organization or which creates a deliberative organ that has the capacity to accept a reservation must also be communicated to such organization or organ.

2.1.6 Procedure for communication of reservations[38]

Unless otherwise provided in the treaty or agreed by the contracting States and contracting organizations, a communication relating to a reservation to a treaty shall be transmitted:

(i) If there is no depositary, directly by the author of the reservation to the contracting States and contracting organizations and other States and international organizations entitled to become parties to the treaty; or

(ii) If there is a depositary, to the latter, which shall notify the States and organizations for which it is intended as soon as possible.

Where a communication relating to a reservation to a treaty is made by electronic mail, it must be confirmed by regular mail [or by facsimile].

2.1.7 Functions of depositaries[39]

The depositary shall examine whether a reservation to a treaty formulated by a State or an international organization is in due and proper form.

In the event of any difference appearing between a State or an international organization and the depositary as to the performance of the latter's functions, the depositary shall bring the question to the attention of:

(a) The signatory States and organizations and the contracting States and contracting organizations; or

---

[35] For the presentation of this draft guideline, see ibid., paras. 72-77.

[36] For the presentation of this draft guideline, see ibid., paras. 78-82.

[37] For the presentation of this draft guideline, see ibid., paras. 99-129.

[38] For the presentation of this draft guideline, see "Sixth report on reservations to treaties" (A/CN.4/518/Add.2), paras. 135-154.

(b) Where appropriate, the competent organ of the international organization concerned.

2.1.7 bis *Case of manifestly impermissible reservations*[40]

Where, in the opinion of the depositary, a reservation is manifestly impermissible, the depositary shall draw the attention of the author of the reservation to what, in the depositary's view, constitutes such impermissibility.

If the author of the reservation maintains the reservation, the depositary shall communicate the text of the reservation to the signatory States and international organizations and to the contracting States and international organizations, attaching the text of the exchange of views between the depositary and the author of the reservation.

2.1.8 *Effective date of communications relating to reservations*[41]

A communication relating to a reservation shall be considered as having been made by the author of the reservation only upon its receipt by the State or organization to which it was transmitted.

2.2 *Confirmation of reservations when signing*

2.2.1 *Formal confirmation of reservations formulated when signing a treaty*[42]

If formulated when signing the treaty subject to ratification, act of formal confirmation, acceptance or approval, a reservation must be formally confirmed by the reserving State or international organization when expressing its consent to be bound by the treaty. In such a case, the reservation shall be considered as having been made on the date of its confirmation.

2.2.2 *Instances of non-requirement of confirmation of reservations formulated when signing a treaty*[43]

A reservation formulated when signing a treaty does not require subsequent confirmation when a State or an international organization expresses by its signature its consent to be bound by the treaty.

2.2.3 *Reservations formulated upon signature when a treaty expressly so provides*[44]

A reservation formulated when signing a treaty, where the treaty expressly provides that a State or an international organization may make such a reservation at that time, does not require formal confirmation by the reserving State or international organization when expressing its consent to be bound by the treaty.

---

[39] For the presentation of this draft guideline, see ibid., paras. 156-170.

[40] For the presentation of this draft guideline, see "Seventh report on reservations to treaties" (A/CN.4/526), paras. 44-46.

[41] For the presentation of this draft guideline, see "Sixth report on reservations to treaties" (A/CN.4/518/Add.2), para. 155.

[42] For the commentary to this draft guideline, see *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10* (A/56/10), pp. 465-472.

[43] For the commentary to this draft guideline, see ibid., pp. 472-474.

[44] For the commentary to this draft guideline, see ibid., pp. 474-476.

2.3 *Late formulation of a reservation*[45]

2.3.1 *Late formulation of a reservation*[46]

Unless the treaty provides otherwise, a State or an international organization may not formulate a reservation to a treaty after expressing its consent to be bound by the treaty except if none of the other contracting Parties objects to the late formulation of the reservation.

2.3.2 *Acceptance of late formulation of a reservation*[47]

Unless the treaty provides otherwise or the well-established practice followed by the depositary differs, late formulation of a reservation shall be deemed to have been accepted by a contracting Party if it has made no objections to such formulation after the expiry of the 12-month period following the date on which notification was received.

2.3.3 *Objection to late formulation of a reservation*[48]

If a contracting Party to a treaty objects to late formulation of a reservation, the treaty shall enter into or remain in force in respect of the reserving State or international organization without the reservation being established.

2.3.4 *Subsequent exclusion or modification of the legal effect of a treaty by means other than reservations*[49]

A contracting Party to a treaty may not exclude or modify the legal effect of provisions of the treaty by:

(a) Interpretation of a reservation made earlier; or

(b) A unilateral statement made subsequently under an optional clause.

2.4 *Procedure regarding interpretative declarations*

2.4.1 *Formulation of interpretative declarations*[50]

An interpretative declaration must be formulated by a person competent to represent a State or an international organization for the purpose of adopting or authenticating the text of a treaty or expressing the consent of the State or international organization to be bound by a treaty.

[2.4.1 bis *Competence to formulate an interpretative declaration at the internal level*[51]

The determination of the competent body and the procedure to be followed for formulating an interpretative declaration at the internal level is a matter for the internal law of each State or international organization.

---

[45] For the commentary to this heading, see ibid., pp. 476-477.
[46] For the commentary to this draft guideline, see ibid., pp. 477-489.
[47] For the commentary to this draft guideline, see ibid., pp. 490-493.
[48] For the commentary to this draft guideline, see ibid., pp. 493-495.
[49] For the commentary to this draft guideline, see ibid., pp.495-499.
[50] For the presentation of this draft guideline, see "Sixth report on reservations to treaties" (A/CN.4/518/Add.1), paras. 88-90.
[51] For the presentation of this draft guideline, see ibid., paras. 91-95.

A State or an international organization may not invoke the fact that an interpretative declaration has been formulated in violation of a provision of the internal law of that State or the rules of that organization regarding competence and the procedure for formulating interpretative declarations as invalidating the declaration.]

2.4.2 *Formulation of conditional interpretative declarations*[52]

A conditional interpretative declaration must be formulated in writing. Where necessary, formal confirmation of a conditional interpretative declaration must be effected in the same manner.

A conditional interpretative declaration must be communicated in writing to the contracting States and contracting organizations and other States and international organizations entitled to become parties to the treaty. A conditional interpretative declaration regarding a treaty in force which is the constituent instrument of an international organization or which creates a deliberative organ that has the capacity to accept a reservation must also be communicated to such organization or organ.

2.4.3 *Time at which an interpretative declaration may be formulated*[53]

Without prejudice to the provisions of guidelines 1.2.1, 2.4.6 and 2.4.7, an interpretative declaration may be formulated at any time.

2.4.4 *Non-requirement of confirmation of interpretative declarations made when signing a treaty*[54]

An interpretative declaration made when signing a treaty does not require subsequent confirmation when a State or an international organization expresses its consent to be bound by the treaty.

2.4.5 *Formal confirmation of conditional interpretative declarations formulated when signing a treaty*[55]

If a conditional interpretative declaration is formulated when signing a treaty subject to ratification, act of formal confirmation, acceptance or approval, it must be formally confirmed by the declaring State or international organization when expressing its consent to be bound by the treaty. In such a case the interpretative declaration shall be considered as having been made on the date of its confirmation.

2.4.6 *Late formulation of an interpretative declaration*[56]

Where a treaty provides that an interpretative declaration can be made only at specified times, a State or an international organization may not formulate an interpretative declaration concerning that treaty subsequently except if none of the other contracting Parties objects to the late formulation of the interpretative declaration.

---

[52] For the presentation of this draft guideline, see ibid., paras. 83-87.

[53] For the commentary to this draft guideline, see *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10* (A/56/10), pp. 499-501.

[54] For the commentary to this draft guideline, see ibid., pp. 501-502.

[55] For the commentary to this draft guideline, see ibid., pp. 502-503.

[56] For the commentary to this draft guideline, see ibid., pp. 503-505.

2.4.7 Late formulation of a conditional interpretative declarations[57]

A State or an international organization may not formulate a conditional interpretative declaration concerning a treaty after expressing its consent to be bound by the treaty except if none of the other contracting Parties objects to the late formulation of the conditional interpretative declaration.

2.4.8 Communication of conditional interpretative declarations[58]

A conditional interpretative declaration must be communicated in writing to the contracting States and contracting organizations and other States and international organizations entitled to become parties to the treaty under the same conditions as a reservation.

A conditional interpretative declaration to a treaty in force which is the constituent instrument of an international organization or which creates a deliberative organ that has the capacity to accept a reservation must also be communicated to such organization or organ.

---

[57] For the commentary to this draft guideline, see ibid., pp. 505-506.

[58] For the presentation of this draft guideline, see "Sixth report on reservations to treaties" (A/CN.4/518/Add.2), paras. 171-173.